

GILA ELECTRONICS

IBLA 89-512

Decided November 27, 1990

Appeal from a decision of the Yuma District Office, Bureau of Land Management, setting rental for communication site lease AZA 22968.

Affirmed.

1. Appraisals--Communication Sites--Federal Land Policy and Management Act of 1976: Rights-of-Way--Rights-of-Way: Appraisals

A BLM appraisal of fair market rental value of a communication site lease will be upheld unless an appellant can show error in the appraisal methods used and demonstrate by convincing evidence that the rental charge is excessive. In the absence of a preponderance of evidence that the appraisal is erroneous, an appraisal generally may be rebutted only by another appraisal.

APPEARANCES: H. Carter Hendrick for Gila Electronics, Yuma, Arizona; Fritz L. Goreham, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Gila Electronics has appealed from a May 4, 1989, rental determination decision of the Yuma, Arizona, District Office, Bureau of Land Management (BLM), setting a \$5,000 annual rental for communication site lease AZA 22968 on Telegraph Pass, near Yuma, Arizona.

On August 7, 1987, Arcamex Avionics, Inc. (Arcamex), submitted a commercial communications site right-of-way application to install a building and freestanding tower for a mobile relay radio service. It requested joint use of a Telegraph Pass communications site already in use by the State of Arizona Department of Public Safety (DPS). DPS consented to share the site. On May 20, 1988, BLM then granted the right-of-way effective May 16, 1988, subject to an appraisal to determine the fair market rental value of the site.

BLM issued its appraisal report effective as of February 9, 1989. The report defined a communication site right-of-way to include nonexclusive use (Appraisal Report at 1). The report compared the site with other such rights-of-way and emphasized area (population) covered, agreement date, access (particularly whether seasonal or year-round), lease terms, electric power, and topography. After looking at 84 communication site leases, including 30 commercial communication site leases, the report focused on 8 sites serving areas with a population similar in size to Yuma (Appraisal Report at 2). The annual rentals for these eight sites ranged from \$4,800 to \$7,320. After comparing these to the Telegraph Pass site, the report concluded that the market rental for a commercial communication site on Telegraph Pass would be \$5,000 per year (Appraisal Report at 23).

On May 4, 1989, BLM issued its decision informing Arcamex that the rental would be \$5,000 per year, based upon its appraisal. BLM requested rental at this rate from May 16, 1988, the effective date of the right-of-way. Gila Electronics (Gila), the successor in interest in this communication site right-of-way, brought this appeal.

In its statement of reasons for appeal, Gila argues that the BLM estimate of fair market value rental was excessive because this site was not comparable to other sites with more land, better access, and no DPS restrictions. Appellant notes that it may use only a portion of the DPS site and access is hampered by the lack of a direct road and an 8-foot retaining wall. Appellant also disputes the imposition, retroactive to May 1988, of a rental rate derived in 1989. Appellant objects that this rate was not uniformly applied to all tenants.

BLM responds that its appraisal was done in accordance with established practices consistent with decisions of this Board, and that appellant offers "nothing further as a basis to challenge the BLM appraisal." BLM states that space and access available at the site are adequate for appellant's purpose and the rental was appraised in view of that functional purpose. While BLM agrees that other "ongoing permittees" paid less, BLM notes that their rentals could not be reset based upon the new appraisal until the ensuing charge year.

[1] Section 504(g) of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, 43 U.S.C. § 1764(g) (1988), requires the holder of a right-of-way issued pursuant to FLPMA to pay the fair market rental value annually in advance. (See also Lease at 2). BLM may allow use of a right-of-way prior to a formal appraisal. 43 CFR 2803.1-2(c)(3)(ii); Jancur Inc., 93 IBLA 310 (1986). Where BLM has appraised the fair market value of a right-of-way, we have consistently held that such appraisal will not be overturned on appeal unless there is demonstrated error in the appraisal method used or convincing evidence establishes that the appraised value is excessive. Tortoise Communications, 105 IBLA 193, 194 (1988), and cases cited therein. In the absence of a preponderance of evidence that a BLM appraisal is erroneous, such an appraisal generally may be rebutted only by another appraisal. Mesa Broadcasting Co., 94 IBLA 381, 382 (1986).

In its appraisal, BLM utilized the comparable lease method of appraisal. We have long held that this method is the preferred method for determining the fair market rental value of communications site rights-of-way when there is adequate data. Harvey Singleton, 101 IBLA 248, 250 (1988); Full Circle, Inc., 35 IBLA 325, 333, 85 I.D. 207, 211 (1978). Further, current regulations explicitly authorize the use of a "market survey of comparable rentals." 43 CFR 2803.1-2(c)(3)(i). Appellant has not shown any error in the application of this method, nor has it attempted to rebut the BLM appraisal with another appraisal.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Yuma District Office is affirmed.

John H. Kelly
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge